

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ROBERT EDWARD KUBIAK,

Plaintiff,

vs.

COUNTY OF RAVALLI, SHERIFF
STEPHEN HOLTON, DEPUTY
DARYL PETZ, and John Does 1-10,

Defendants.

CV 20–36–M–DWM

ORDER

Plaintiff Robert Kubiak has filed a motion for attorney fees pursuant to the terms of the offer of judgment that Kubiak accepted, and on which the Clerk of Court entered judgment for Kubiak pursuant to Federal Rule of Civil Procedure 68. (*See* Docs. 47, 47-1, 50, 51.) The offer of judgment states that the Defendants would pay \$50,000 “plus costs accrued to date (including reasonable attorneys’ fees) in an amount to be determined by the Court.” (Doc. 47-1.) Kubiak does not seek fees pursuant to 42 U.S.C. § 1988.

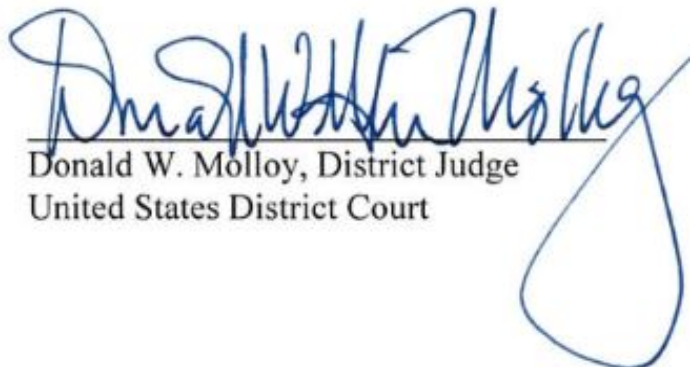
An accepted Rule 68 offer of judgment becomes a settlement agreement, and the plaintiff who accepts such an offer is entitled “to rely on the plain language of the offer they accepted.” *Miller v. City of Portland*, 868 F.3d 846, 850–51 (9th Cir. 2017). Here, the plain language of the Rule 68 offer of judgment requires the

award of reasonable attorney fees. Although Kubiak is not a “prevailing party” under 42 U.S.C. § 1988, the lodestar method for determining “reasonableness” nonetheless guides the determination of reasonable fees in this case, and “[t]he most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate.” *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

Here, counsel for Kubiak has submitted evidence showing the hours of work expended on this case, the rate at which those hours were billed, and the standard community rate for similar work. (Docs. 53, 53-1, 53-2.) Kubiak’s counsel represents that he spent 100.1 hours of attorney time until the date the offer of judgment was accepted, billed at a rate of \$250/hour, and 86.65 hours of paralegal time, billed at a rate of \$50/hour, for a total of \$29,335. (Doc. 53-1 at ¶ 17(b).) This amount is reasonable. Accordingly,

IT IS ORDERED that Kubiak’s motion for attorney fees in the amount of \$29,335.00 pursuant to the offer of judgment, (Doc. 52), is GRANTED.

DATED this 9th day of July, 2021.


Donald W. Molloy, District Judge
United States District Court